



POLICE DEPARTMENT CITY OF NEW YORK

June 1, 2017

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Colin Austin  
Tax Registry No. 921131  
Strategic Response Group 3 Brooklyn  
Disciplinary Case No. 2016-15896

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**Charges and Specifications:**

1. Said Lt. Colin Austin, on or about October 20, 2015, at approximately 2011 hours, while assigned to the 48<sup>th</sup> Precinct and on duty, in the vicinity of [REDACTED] wrongfully used force, in that he used a Taser against Sean Evans without police necessity.  
P.G. 203-11 - USE OF FORCE
2. Said Lt. Colin Austin, on or about October 20, 2015, at approximately 2011 hours, while assigned to the 48<sup>th</sup> Precinct and on duty, in the vicinity of [REDACTED] wrongfully used force, in that he discharged a second Taser cycle against Sean Evans as he lay on the floor, without police necessity. *(As amended)*  
P.G. 203-11 - USE OF FORCE

**Appearances:**

For CCRB-APU: Raasheja Page, Esq. & Timothy Jones, Esq.  
Civilian Complaint Review Board  
100 Church Street, 10<sup>th</sup> floor  
New York, NY 10007

For the Respondent: Philip Karasyk, Esq.  
Karasyk & Moschella, LLP  
233 Broadway-Suite 2340  
New York, NY 10279

**Hearing Date:**

April 5, 2017

**Decision:**

Not Guilty

**Trial Commissioner:**

DCT Rosemarie Maldonado

## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on April 5, 2017. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. CCRB called Sean Evans and Minor A as witnesses. Respondent called Police Officer Brian Cintron as a witness and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

## DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Not Guilty of the charged misconduct.

## FINDINGS AND ANALYSIS

This case arises out of Respondent's decision to deploy his Conducted Energy Device (CED), or Taser, for two cycles to effectuate the arrest of Sean Evans on October 20, 2015. The following facts are undisputed. On the evening in question, [REDACTED], Individual 1, contacted police [REDACTED] [REDACTED] Police Officer Brian Cintron and his partner, Officer D'Errico, both assigned to the 48 Precinct, were first to respond to the residence Individual 1 and Evans [REDACTED] [REDACTED]. Evans's fifteen-year old [REDACTED] [REDACTED] was also staying with them and was present as was Individual 1's aunt, Individual 2. A patrol supervisor, Sergeant Campuzano, also responded to the home and requested Respondent's presence at the location. (Tr. 17, 51, 75-77, 102-03. Respondent's Exhibit ("RX") B at 19-20)

Cintron asked Individual 1 if Mr. Evans had ever abused her [REDACTED]

[REDACTED] She alleged that the



bruising was caused by Mr. Evans grabbing her days before as she tried to walk away.<sup>1</sup> At that point, Respondent made the decision to arrest Evans for assault and entered the residence with Officers Cintron and D'Errico and Individual 1. The officers then entered a bedroom and found Mr. Evans laying on the bed. The sum and substance of the verbal exchanges that followed are disputed, but it is not contested that Mr. Evans was advised he was under arrest and would need to go with the officers. He did not immediately comply and asked at least twice why he was being arrested. After several minutes had elapsed without compliance from Mr. Evans, Respondent deployed his Taser, striking Mr. Evans, who stood 6 foot 2 and weighed approximately 250 pounds, in his chest, causing him to fall to the floor. After briefly assessing Mr. Evans' status, Respondent then deployed a second cycle. At that point, the officers were able to handcuff Evans and remove him from the apartment by his arms and legs because he did not stand up. (Tr. 19-23, 46-47, 53-57, 77-85, 102-07, 111-12, RX B at 3-7)

After being treated by EMS outside the residence, Mr. Evans was taken to St. Barnabas Hospital where the Taser darts were removed. He was discharged on the same day. Following the incident, Respondent's use of the CED was investigated by a supervisor, Captain Anthony Piazza, who detailed in a Less Lethal Equipment Use Report, that Respondent utilized his CED in order to place a suspect into custody after he refused to place his hands behind his back and flailed his arms when Respondent "attempted to assist in retraining the suspect." Captain Piazza determined that Respondent "utilized [the CED] according to Department guidelines and procedures." (CCRB Exhibit ("CCRBX" 2).

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<sup>1</sup> [REDACTED]



[REDACTED]

[REDACTED] Mr. Evans also filed a civil lawsuit, which is presently pending, seeking monetary damages. (Tr. 36, 39, 45-46, 89)

At issue is whether Respondent was justified in discharging the Taser on Evans. Evans argued there was no justification, viewing the use of the Taser as an unlawful "injustice," and maintained that he was "respectful the whole time." (Tr. 23, 36, 49) He testified that on the evening in question, he was lying down watching television in his bedroom as he prepared to go to work at Walgreens. He remembered being alerted by his [REDACTED] that police were in the house, quickly followed by Respondent and two other officers entering his bedroom. (Tr. 17-18) Respondent, in an aggressive tone, asked if he was Sean Evans and, after he affirmed that he was, ordered that he would have to go with them. Unsure as to why the officers were in his residence, Evans questioned, "[w]hy must I go with you? What happened, what's going on?" Respondent, he contended, replied that he did not have to explain anything and asked if he knew Individual 1. When Evans confirmed that he did, Respondent reiterated, "[y]ou have to come with us." Two or three more times, Evans asked what was going on but got "the same aggressive response" from Respondent, who he alleged retorted, "I don't have to respond to you. I don't have to answer to you." Evans denied cursing at, threatening or attempting to physically harm Respondent during this exchange. The other officers in the room, he noted, did not speak to him and were "quiet," "nice," and "polite." (Tr. 19-23, 39)

Evans explained he did not go with the officers immediately because he felt uncertain and scared. He insisted he was never given any information about why the officers were in the residence or why he was under arrest at any point during the encounter. He further denied that



any of the officers attempted to take his arms and handcuff him prior to the CED discharge.<sup>2</sup> He remembered telling his [REDACTED] to watch what was happening "because in case anything happened, I would have a reliable source." She "walked vaguely in the room . . . right by the entrance." Individual 1's aunt, he noted, was also "vaguely by the doorway." (Tr. 21-22, 33-34)

Seeing as he "wasn't getting anywhere" with Respondent, Evans testified that he began "making [his] way up off the bed . . . to comply" when he was tased in the chest.<sup>3</sup> Immediately before tasing him, he recalled Respondent saying, "you need to come with us and follow the commands that were given to you." (Tr. 20-21) Upon being struck by the Taser, he described feeling a "burning bubble sensation, that was going on in [my] chest like uncontrolled," as though his chest "was coming out from the skin." He stated that he fell to the floor, "screaming in agony and pain and utmost disbelief," and felt like he was incapacitated and unable to think. He suggested the sensation of the pain felt like minutes, though recognized it was actually seconds. As it began to subside, he felt the same sensation once again when he was tased for the second time. Evans denied threatening any of the officers prior to being tased the second time, contending, "I couldn't. I was incapacitated." (Tr. 22-25) He also alleged not to have heard any instructions from Respondent in between the two discharges. (Tr. 26)

After being tased the second time, Evans recalled being handcuffed and dragged toward the doorway as he requested medical attention. (Tr. 27) When asked whether officers had to pry his hands from underneath him to cuff him, he replied, "I wouldn't recall that. I was being tased," but testified that he was not resisting. (Tr. 35). According to Evans, he was physically

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<sup>2</sup> At a CCRB interview on January 20, 2016, Evans, when asked if he was ever told by Respondent why he was tased, responded, "He did say that I was resisting. I said I wasn't resisting... They pulled out the cuffs getting ready to handcuff... and I was not moving . . . ." At trial, Evans testified that the officers did not have their handcuffs out until after he was tased. He stated that he gave this answer at CCRB in "relation to [the] Taser being pulled out." (Tr. 33-34)

<sup>3</sup> He estimated that about five minutes had elapsed from when the officers entered his bedroom to when he was initially tased. (Tr. 30)



incapable of walking out of the home, but acquiesced he never actually verbalized this to the officers.<sup>4</sup> He believed that it was implicit in the fact that he asked for medical attention. (Tr. 41-44)

Evans asserted that he did not bruise Individual 1 and did not harm any of her children. He acknowledged that police had been called to their home on two prior occasions and that they had a disagreement a few days before his arrest but contended her allegation that he bruised her was false. He characterized the state of their relationship at the time as "a bit rocky," because she had recently discovered that he had been unfaithful. He also believed that she was upset because he had discontinued her cell phone service. Evans alleged that Individual 1 had threatened to get him back for hurting her and suggested that Respondent did not "connect the dots...that [she] was in rage." (Tr. 28-31, 47-49)

When asked where his sister was when he was hit with the Taser, Mr. Evans responded, "I think she was looking at it, if I'm not mistaken." On cross-examination, he acknowledged that his [REDACTED] was pulled away. He initially stated that this did not happen before he was tased but ultimately conceded that he did not know exactly when she was pulled away. (Tr. 40)

Minor A also testified at trial, corroborating much of her [REDACTED]'s testimony. She recounted hearing a knock on the door and opening it to find Individual 1, whose relationship with her [REDACTED] she characterized as "dead" and "broken" at this point, accompanied by police officers. Individual 1, she recalled, pointed to the bedroom where her [REDACTED] was located and the officers proceeded into the room. Minor A followed them<sup>5</sup> and, as she stood in the hallway

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<sup>4</sup> At his CCRB interview, in response to whether he walked out of the apartment with the officers, Mr. Evans replied, "I didn't walk out of the apartment because they wanted me to get up on their terms. I said no. I want EMS to come here. But no, they picked me up and they pulled me out..." (Tr. 42) He agreed that he did not say anything to the CCRB investigator about being physically incapable of walking out of the apartment.

<sup>5</sup> She stated that Individual 1 and Individual 2 remained in the kitchen, which was a "couple of steps" from the bedroom. (Tr. 60)



looking directly inside the bedroom, she heard an officer advise her [REDACTED] that he was under arrest. She remembered hearing her [REDACTED] ask twice why he was being arrested but getting no response other than that he needed to go with the officers. She stated that at no point during this conversation did her [REDACTED] make any threats against the officers or attempt to physically attack or aggress toward them. (Tr. 51-56, 60-61)

Minor A contended that her [REDACTED] was "about to get up off the bed" when Respondent, without any warning,<sup>6</sup> pulled out and discharged his Taser. Her [REDACTED] fell on the floor, shaking and yelling indecipherable sounds, and then was tased again. She did not hear Respondent say anything in between the first and second Taser discharge and further denied hearing or observing her [REDACTED] threatening or attempting to attack the officers between the discharges. She testified that following the second discharge, "the Taser stopped and then I got pulled." (Tr. 55-58, 63) Though she did not initially remember who pulled her away, she agreed on cross-examination that it was Individual 2, but reiterated that she did so "after the tasing was done." (Tr. 71-72)

Individual 1 and her [REDACTED] Individual 2, provided accounts to CCRB that differed from those of the Evans [REDACTED] in key ways, namely that Mr. Evans was advised of why he was being arrested and that he was warned that he would be tased and did not behave in a cooperative manner. They did not appear to testify at trial but transcripts of their February 2016 telephone conversations with a CCRB investigator were entered into evidence by Respondent.

Individual 1 detailed that she contacted police because of bruises on her arm that Evans had caused days prior [REDACTED]

[REDACTED] stated at the outset of her interview that she

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<sup>6</sup> In a telephone interview with a CCRB investigator, the investigator recapped, "Okay, and then you said so the lieutenant came in and then he was like, 'you got to find something and finally get up. If you don't you're going to get tased. Something like that. So yeah.'" Ms. Evans did not recall this exchange and declined to read from the interview transcript to refresh her memory. Counsel stipulated it was read correctly into the record. (Tr. 65-69)



"didn't see much as far as being in the room." She recalled that she "heard . . . Mr. Evans being uncooperative," and specifically noted that when he was advised that he was under arrest for "putting his hands on [her]," he did not comply with multiple directives to go with the officers. Instead, he pointed out they did not have a warrant and alleged that Individual 1 had hit him too. (RX 2 at 3-6, 19-20) She remembered an officer eventually saying, "Look, you know, sir, if you don't get up and come with us, you know I'm going to have to go tase you because you are under arrest and you are resisting," to which Evans replied, "No. I'm not." Later in the conversation, she recalled the officer saying, "I don't want to have to [tase you], but I will have to do it . . . if you don't get up." She believed that at that point, the officer tried to cuff Evans and "it was just . . . chaos in there. The officer warned him. He refused. That's why he got tased." (*Id.* at 4-5, 18) She did not believe Evans was fighting or swinging or hitting the officers but reiterated, "I didn't see a thing. I didn't want to . . . I just heard a commotion in the next room. That's all . . . I couldn't see." (*Id.* 6 7) She estimated that it was a "good ten to fifteen minutes . . . maybe more" that the officers spoke to Mr. Evans before tasing him.

Individual 1 confirmed that Minor A saw her [REDACTED] get tased and remembered him calling to her, "Come watch . . . They're about to tase me . . . You're not going to really tase me in front of my [REDACTED]" (*Id.* at 8) After he was tased, she saw Evans briefly as he was being "dragged" out of the apartment by his arms. She characterized his behavior as "dramatic," explaining "he didn't want to get up and walk out the apartment . . . he had this pride, like . . . I did not do nothing." In her view, Mr. Evans did not appear injured. (*Id.* at 15-17) She had no complaints about the officers who responded to her home on the day in question (*Id.* at 22)

Unlike her [REDACTED] Individual 2, actually observed Mr. Evans interacting with the officers and being tased. After two, or possibly four, officers entered the



residence. she moved from the living room to the hallway, "looking into the bedroom" where Evans was located. The officers, she recalled, directed Evans to come with them and he responded, "You're messing with me. I got to go to work . . . I'm not getting up." After Evans said he would not get up, she stated "they became a little bit belligerent." According to Individual 2, the officers then said, "Sir, if you don't get up, we're going to have to help you to get up." She was unsure if he was specifically warned that the Taser would be used. Evans, she detailed, became belligerent and loud, yelling, "Get out of here... This is my house. You don't belong in here." (RX 3 at 2-4) When asked if the officers ever tried to grab Evans, she stated she was unsure but that she vaguely remembered somebody reaching for him and Evans "swing[ing] back" and saying, "Get off me." She approximated that after ten minutes of trying to get Evans to go with them, an officer tased him. (*Id.* at 5-6)

After Evans was tased, she remembered that Individual 1 grabbed his [REDACTED] and pulled her away. Individual 2 did not observe the Taser being used on Evans a second time. After he was tased, Evans just "screamed, screamed, screamed" and refused to get up. She recalled that an officer tried to give him his shoes, which he threw and began kicking. After being unable to get Mr. Evans to stand, she watched as officers dragged him backward under his arm out of the apartment. (*Id.* at 5, 8-9) When asked if she had any complaints against the officers, she said, "No. I don't. I thought that they handled the situation well." (*Id.* at 10)

Respondent's testimony largely aligned with the account provided by Individuals 1 and 2. Upon arriving at the residence at the request of the patrol supervisor and learning of a child abuse allegation, Respondent recalled asking Individual 1 if "any domestic violence" had transpired between her and Evans. He explained that he had learned in training that allegations of child abuse can "usually" be accompanied by domestic violence between parents. When



Individual 1 responded that there had been an incident a few days earlier where Mr. Evans bruised her arm, Respondent decided, "based upon police protocol and guidelines," to place Evans under arrest for assault. He determined that Cintron would be the arresting officer and that he would accompany him into the residence to supervise the arrest. (Tr. 102-05)

Respondent further recounted that after entering the home, he knocked on Mr. Evans' bedroom door, announcing "police," and advised Evans that he was under arrest. In response to Evans asking what he had done, Respondent recalled replying "You are going to be placed under arrest for domestic violence against your girlfriend." Mr. Evans, he remembered, countered that he had not done anything and continued to ask why he was being arrested. Respondent heard Cintron answer that Individual 1 had bruises on her arms and that he was being arrested for that. Evans then became more irate, insisting, "You can't just come in here...get out of my apartment. I have to go to work...I'm not getting arrested today." (Tr. 106-07) Respondent stated that his primary objective during this exchange was to convince Evans to cooperate, noting most injuries to police officers occur during domestic violence calls and car stops. (Tr. 108) He did acquiesce, though, that Evans neither verbally threatened nor attempted to swing at, slap, spit at, kick or charge at him. (Tr. 119)

When asked how he evaluated what type of force to employ to effectuate the arrest, Respondent testified that, in his experience, the "most effective method" for apprehending an individual without injury is the CED or Taser. In response to why he did not opt to use other types of force, Respondent explained that using physical force to get Mr. Evans into custody would have likely resulted in injuries to either Evans or one of the officers. He rejected using the asp for similar reasons, as it can cause serious injury and broken bones. He also did not see pepper spray as a viable option, pointing out that it has "more long lasting effects" and can cause



asthma attacks or hyperventilating. He was also hesitant to use pepper spray in the contained space of the apartment, as children were present. (Tr. 108-10)

Prior to using the CED, Respondent was "very careful" to warn Mr. Evans "numerous times" that if he resisted arrest, he would have to use the Taser. Both he and Cintron tried to grab Evans's arms but he yanked them back "forcefully." Based on this act of resistance, Respondent decided to discharge the Taser and verbally warned the other officers before deploying one cycle. After a brief assessment where he observed the officers still struggling to cuff Evans, he deployed the Taser for a second cycle because Evans was "actively still resisting" by pulling his arms in the opposite direction of the handcuffs.<sup>7</sup> Respondent asserted that even after being placed in handcuffs, Evans continued to act in a belligerent and hostile manner and refused to cooperate by standing or putting on shoes. (Tr. 111-13, 119-20, 123-25)

On cross-examination, Respondent estimated that he has deployed the Taser about five or six times in his career. He concurred that the device could not be used to coerce an individual or against an individual who is passively resisting or refusing to give their hands. He acknowledged being trained to avoid hitting the head or neck but did not agree that officers are trained to avoid the chest area. (Tr. 113-16)

Respondent also presented testimony from Officer Brian Cintron, who was the first to respond to Ms. [REDACTED]'s call. After proceeding inside with his partner and Respondent, Cintron advised Mr. Evans, who was lying on his stomach on his bed, that he was being placed under arrest for domestic abuse because Ms. [REDACTED] had alleged that he caused the bruising on her arm. Mr. Evans, he recalled, said, "That's not right, that didn't happen...I'm not getting arrested

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<sup>7</sup> Respondent acknowledged on cross that he told CCRB that Mr. Evans was "temporarily incapacitated" following the first Taser discharge, but clarified on redirect that he did not remain incapacitated after the five second pulse terminated. He specified that Evans was conscious and did not appear dazed. (Tr. 125, 127-29)



tonight." Cintron took this to mean he was going to fight the officers if they tried to arrest him. He "calmly" implored him to stand up with his hands behind his back to no avail and then informed him that if he did not comply, "necessary force" would be used. He also heard Respondent warn that if Evans did not comply, he would use the Taser. At that point, Cintron, who stands five feet, three inches tall and weighs 110 pounds, grabbed onto his right wrist and held it briefly until Evans pulled away, yelling and cursing. (Tr. 80-83, 90)

Cintron then heard Respondent caution, "step back, Taser, Taser," followed by the sound of the Taser deploying. He saw Evans fall to the floor between the bed and the wall, landing on his chest. He was unaware of the exact number of times Evans was tased. Cintron again tried to grab one of Evans' hands but he was laying on top of them and clenched up despite Cintron's commands to give his hands. He did not characterize this as "physical" resistance but considered it to be active resistance. Pulling on Evans' hands using "a lot of strength," Cintron was finally able to pry one of his hands from under him after about seven seconds. Because Evans refused to stand up, Cintron and "several other officers" had to grab him by his arms and legs to remove him from the apartment. (Tr. 82-85, 93-94, 97-99)

On cross-examination, Cintron acquiesced that Mr. Evans made no threats nor attempts to physically harm him or Respondent during the course of their encounter. He further agreed that he never saw a weapon on Evans. Finally, he concurred that Evans' nervous system and sensory perception could have been impacted by the Taser. (Tr. 91-95)

At issue is whether Respondent acted wrongfully and without police necessity in discharging the CED twice against Mr. Evans. As set forth in Patrol Guide Procedure 203-11, which was in effect on the incident date, all uniformed members of service are "responsible and accountable for the proper use of force under appropriate circumstances" and should use only

"minimum necessary force." In analyzing claims of excessive force, courts have held that the threshold question is whether there was cause for force to be used. "If there was not, any force used was unjustified. If there was cause, then the inquiry focuses on whether the amount of force exercised by Respondent was reasonable." *Police Dep't v. Sisto*, OATH Index No. 1886/99 (Aug. 3, 1999), citing *Police Dep't v. Giglia*, OATH Index Nos. 1197-98/90 (Nov. 8, 1990), *aff'd sub nom. Gatto v. Brown*, 234 A.D. 2d 22 (1st Dep't 1996). To determine whether the force used in this instance constituted "minimum necessary force," it is essential to look to the Patrol Guide procedure specifically dealing with Conducted Energy Devices.

Patrol Guide 212-117, effective on the date of the incident, explains that the CED is "intended to augment and provide a greater margin of safety for officers who might otherwise be forced to physically subdue a dangerous subject," and "often reduce[s] the potential for injuries to [officers] and suspects that may result from physical restraint . . . ." The use of a CED is within the range of use of "less lethal devices such as pepper spray or a baton on the force continuum due to its effectiveness at a distance and at close range." The procedure further mandates that the CED "should only be used against persons who are actively physically resisting<sup>8</sup>, exhibiting active physical aggression or to prevent individuals from physically injuring themselves or other persons actually present," and prohibits using the CED in "situations that do not require the use of physical force." It is expressly prohibited to use the CED as a form of coercion or punishment or on persons who passively resist. In determining whether the use of

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<sup>8</sup> The tribunal takes note that the Patrol Guide procedure regarding Conducted Energy Devices (now Conducted Electrical Weapons) has been revised since the date of this incident. Although not applicable to this case, I note that the Patrol Guide procedure in effect on the date of the incident provided no definition for what constitutes "active" resistance or aggression. The new procedure on "Use of Conducted Electrical Weapons," (P.G. 221-08- effective date- 10/18/16), defines "active resisting" as "includ[ing] physically evasive movements to defeat a member of the service's attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody." Active aggression is defined as a "threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent."



a CED is appropriate in a given situation, an officer should consider the totality of the circumstances in the unfolding situation. The tribunal finds for the reasons set forth below that Respondent's repeated use of the CED in this particular situation was justified, reasonable and in accordance with Department guidelines.<sup>9</sup>

The APU based much of its case on the account of Mr. Evans, who has filed a lawsuit against the city in connection with this incident. Certain statements made by Evans were self-serving and lacked the ring of truth. The tribunal was unconvinced that he was, as he stated, "respectful [to the officers] the whole time," "wasn't being combative in any kind of way," and was "getting ready to comply" at the exact moment he was Tased. His statement that Respondent refused to tell him why he was being arrested also strains credulity. It is possible that Mr. Evans was motivated by his pending lawsuit to describe his own behavior as entirely innocuous while making Respondent's actions sound more egregious than they actually were. Also problematic is that the only witness who corroborated Evans' account was his [REDACTED] aged fifteen at the time of the incident. Given the inherent bias one can be expected to have in favor of her own [REDACTED], her statements are of little probative value.

Conversely, Respondent testified in a largely professional and straightforward manner, explaining convincingly why he believed he was justified in using the CED. It should be preliminarily noted that Respondent entered Mr. Evans' bedroom with probable cause to arrest him for assault based on Individual 1's allegations. I credit his testimony that Evans refused to

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The Patrol Guide also outlines that the recommended point of aim is the lower center mass for frontal discharges (below the chest) and below the neck area for discharges at a suspect's back and cautions officers to avoid discharging at an individual's head, neck and chest, if possible. While it gives the tribunal some pause that Respondent did not agree that he was trained to avoid discharging at the chest, the Patrol Guide does not require absolute precision nor explicitly prohibits officers from discharging at a suspect's chest. Moreover, Respondent is charged with using the CED without police necessity, not with its improper aim. As such, Respondent's admission that the CED dart struck Evans in the chest has no bearing on the charged specifications.



comply with multiple directives and indicated he was "not getting arrested today," a statement that was corroborated by Cintron and would reasonably cause the officers reason to believe he intended to put up a fight. Individual 1 and 2 also echoed that Evans vehemently refused to be placed under arrest for an extended period of time prior to the CED discharge. Finally, Evans himself admitted he refused to go with the officers for approximately five minutes before being Tased.

As such, I find that Respondent acted reasonably and was justified in determining that force was necessary to take the noncompliant suspect into custody. Respondent was also persuasive in his explanation of why he opted to use the CED over other "less lethal" forms of force and he appeared to be sincere in his belief that it was the most effective means of effectuating arrests without collateral injury. It is also significant that Respondent adhered to the Patrol Guide in not discharging the CED until Evans actively physically resisted by pulling his arms away from the officers who tried to grab them in an attempt to handcuff him. This act of resistance was confirmed not only by Cintron but by Individual 2 in her statement to CCRB. Taking all of this into account, the tribunal rejects the APU's contention that Respondent used the CED "without police necessity."

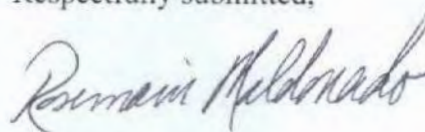
I also find that the second discharge, while perhaps ostensibly more concerning because Mr. Evans was lying on the floor at that point, was also reasonable from Respondent's perspective, given that he, knowing that the effects of the first Taser discharge would quickly wear off, observed Cintron and his partner still struggling to handcuff Evans. While it is certainly possible that it was not Evans' subjective intent to resist at this point, based on these facts it was objectively reasonable for Respondent to believe he was. As such, I find Respondent



was also justified in discharging the CED a second time, immediately after which Mr. Evans was taken into custody.

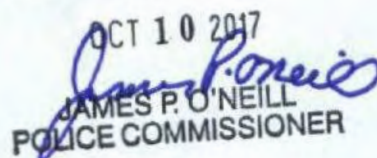
In sum, the CCRB has not met its burden of proving by a preponderance of the credible evidence that Respondent wrongfully used the Taser without police necessity. Conversely, in the view of this tribunal, Respondent used minimum necessary force to effectuate the legitimate arrest of a resisting suspect. Accordingly, I find Respondent Not Guilty.

Respectfully submitted,



Rosemarie Maldonado  
Deputy Commissioner Trials

**APPROVED**

OCT 10 2017  
  
JAMES P. O'NEILL  
POLICE COMMISSIONER